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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,924	04/12/2001	Joseph L. Owades	OW-20	3843

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EXAMINER	
SHERRER, CURTIS EDWARD	
ART UNIT	PAPER NUMBER
1761	6

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/833,924	Applicant(s) OWADES, JOSEPH L.
	Examiner Curtis E. Sherrer	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 August 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) *8-11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Claims 8-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected products, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

Applicant's election with traverse of the restriction in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the products can only be made by adding the oil following fermentation and before packaging rather than during mashing or fermentation. This is not found persuasive because the specification does not exclude the addition during mashing or fermentation and applicant provides no evidence or statements as to what would happen to the extract if added before or during fermentation.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claims 8-11 drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because the scope of the phrase "threshold of taste" is not known. This quantity would be subject to the individual taster and would depend on what solution it is in, i.e., beer, water, ethanol, etc.

Claims 6 and 7 are indefinite because the scope of the term "about" is unknown.

The claims are indefinite because the phrase "juniper oil" appears to correspond to an indefinite extract from juniper berries and therefore it is not clear what exactly is being added. For example, it is not clear what portion of an extract or fresh or dried berries constitutes "juniper berry oil." The chemical constituents of juniper berry include pinene, cadinene, camphine, terpinol and camphor. It is not clear what amounts of these are in the juniper oil that applicant is using. Applicant has not provided any process by which the oil is made or a source for the oil.

Claims 2 and 3 are indefinite because the scope of the term "aging" is not definite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trees for Life (wwww.treesforlife.org.uk/tfl.mythjuniper.html).

Trees for life discloses the old (several millennia) and well known uses of juniper, including, culinary uses, such as meats, breads, cakes, gin, Swedish health beer, and whiskey and medicinal properties, such as, to aid digestion and cure various stomach ailments. (See document). It would have been obvious to those of ordinary skill in the art to prepare a beverage, such as a brewed fermented malt beverage, because it is useful for its medicinal properties.

The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

With regard to the amounts added, those in the health food art would naturally optimize the amount of juniper berry oil, as it is a notoriously well known result effective variable, used in the beverage so as to obtain a product acceptable to the public.

With regard as to the form that is added, it is notoriously well known that juniper has been added to foods as an extract or as berries.

Finally, with regard as to when the oil is added, it would have been obvious to add the oil at any stage in the beverage making process because courts have long held that the selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results. *In re Gibson*, 39 F.2d 975, 5 USPQ 230 (CCPA 1930).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stoyanova , M., Nauka za Gorata, vol. 30, (4), pp. 46-50, 1993, dislcoses amounts and quantities of juniper berry oil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Curtis E. Sherrer
Primary Examiner
October 29, 2002